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VIA ECFS ***EX PARTE***

May 6, 2010

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A325
Washington, DC 20554

Re: GN Docket No. 09-51, WC Docket Nos. 05-25, 06-122, 07-245

Dear Ms. Dortch:

Yesterday, Larissa Herda, Chairman, CEO, and President of tw telecom inc. ("TWTC"), Don Shepheard, Vice President, Federal Regulatory of TWTC and the undersigned held separate meetings with (1) Commissioner Mignon Clyburn and Angie Kronenberg, Acting Legal Advisor, Wireline for Commissioner Clyburn; (2) Commissioner Michael Copps and Jennifer Schneider, Senior Policy Advisor and Legal Advisor for Broadband, Wireline and Universal for Commissioner Copps; and (3) Commissioner Meredith Attwell Baker, Brad Gillen, legal advisor for Media issues for Commissioner Baker and Millie Kerr, Confidential Assistant and Staff Attorney for Commissioner Baker. During the meetings, Ms. Herda made the points discussed in the attached document.

Respectfully submitted,

/s/ Thomas Jones
Thomas Jones

cc: Commissioner Mignon Clyburn
Commissioner Michael Copps
Commissioner Meredith Attwell Baker
Angie Kronenberg
Jennifer Schneider
Brad Gillen
Millie Kerr

PROPOSALS FOR UNLOCKING INVESTMENT IN BROADBAND

WC Docket Nos. 05-25, 07-245, 06-122; GN Docket No. 09-51
(May 5, 2010)

I. SPECIAL ACCESS (DS1, DS3 AND ETHERNET)

A. Appropriate Regulation of Special Access Will Cause Competitors Like TWTC To Increase Investment In Broadband Facilities

- TWTC has no choice but to rely on ILEC off-net loops. The typical multi-location business customer has (1) some locations with sufficient demand to enable TWTC to deploy loop facilities and (2) other locations with insufficient demand to enable TWTC to build loop facilities. The majority of locations fall into the second category and therefore require off-net loops. TWTC is overwhelmingly reliant on ILECs for access to off-net facilities.

- Lower ILEC special access prices would enable TWTC to increase its capital investment. If special access prices are reduced to reasonable levels, TWTC would be able to serve many of the multi-location business customers it cannot serve today. This would cause TWTC to increase capital expenditures on fiber loops, Ethernet electronics, and other broadband facilities. Given TWTC's rate of capital investment, lower special access prices would likely yield more investment in fiber, electronics and other facilities needed to provide broadband by TWTC than would be the case absent lower special access prices.

- High ILEC special access prices cause TWTC to forgo capital investment. There are many situations in which the high cost of ILEC special access loops (DS1, DS3 and Ethernet) has made it unprofitable to serve a multi-location business customer, thereby causing TWTC to forgo building fiber loops to the customer's high-demand locations.

B. Interim Relief Cap on Phase II Price Flex Rates

- The current system is broken. The Commission's special access Pricing Flexibility rules were designed to give the ILECs pricing flexibility in areas subject to the greatest competition, but the ILECs charge higher prices in pricing flexibility areas (so-called Phase II areas) than in other areas. In fact, AT&T is scheduled to increase its prices in Phase II areas after its BST-AT&T merger conditions expire on June 30th. The company has written the price increase into its tariff. In addition, the special access regime is fundamentally flawed in many other important ways: most importantly it places no constraints at all on ILEC Ethernet prices.

- The FCC should take the first step in addressing ILEC market power in the provision of special access. The FCC should begin to address this problem by requiring the ILECs lower prices in Phase II areas to the level of prices charged in areas subject to price caps. This is a modest first step the FCC should take while it works on comprehensive reform of TDM and Ethernet special access.

C. Responding to ILEC Investment Threat

- Responding to ILEC investment threat. The ILECs' threat that appropriately targeted rate regulation will cause them to forgo broadband investment is based on the false premise that they are planning heavy investment in broadband in the near future. The reality is that the BOCs are scaling back on investment. For example, Verizon has announced that it is essentially freezing the geographic footprint for FiOS while AT&T and Qwest have largely avoided building fiber to end user locations. Verizon and AT&T are also aggressively firing employees.

  - According to Jim Patterson of Mobile Symmetry, AT&T has reduced 18,200 employees in the last twelve months, more than the total employee base of Leap Wireless, Metro PCS, Global Crossing and Level3 *combined*. In two years, AT&T has shed the total employee base of Qwest plus an additional 3,000. AT&T is planning to fire at least 12,000 more in 2010.

  - Patterson also reports that Verizon cut 13,000 employees last year, and will cut "at least" 13,000 employees in 2010.

- Comparison of TWTC and ILEC wireline investment. As the attached chart shows, over the past five years TWTC has consistently invested a higher percentage of operating revenues in capital expenditures than is the case with the Verizon or AT&T wireline businesses. Unlike Verizon or AT&T, TWTC has also kept employment totals stable throughout the recession. (See Chart Attached.)

- TWTC's capital investment decisions are determined by a case-by-case assessment of opportunities to serve customers. TWTC has no express limit on capital expenditures. Most capital expenditures are made in response to specific customer service opportunities. Where the economics of serving a customer make sense, TWTC invests in fiber loops, transport, and electronics to provide broadband. Thus, the more customers TWTC can serve profitably, the more capital investments it makes.

II. POLE ATTACHMENTS

- Pole attachments are a critical input to broadband deployment. Reliance on utility poles is often the only practical way of deploying fiber infrastructure. Unreasonable prices and delay associated with obtaining access to poles has a significant negative effect on competitors' ability to deploy fiber facilities. Current pole attachment rules have many flaws, most importantly,

  - They result in rental rates for telecommunications carriers that are two-to-three times higher than rates for cable companies; and

- They do not regulate any aspect of survey and make-ready work, including either prices charged or the time period in which work is performed.

- Rather than release another NPRM, the FCC should promptly adopt new national rules governing pole attachments. The longer the FCC waits to reform pole attachment rules, the longer competitors' attempt to deploy fiber will be slowed or even in some cases thwarted. It is imperative that the FCC include as much as possible in an **Order** rather than an NPRM, including

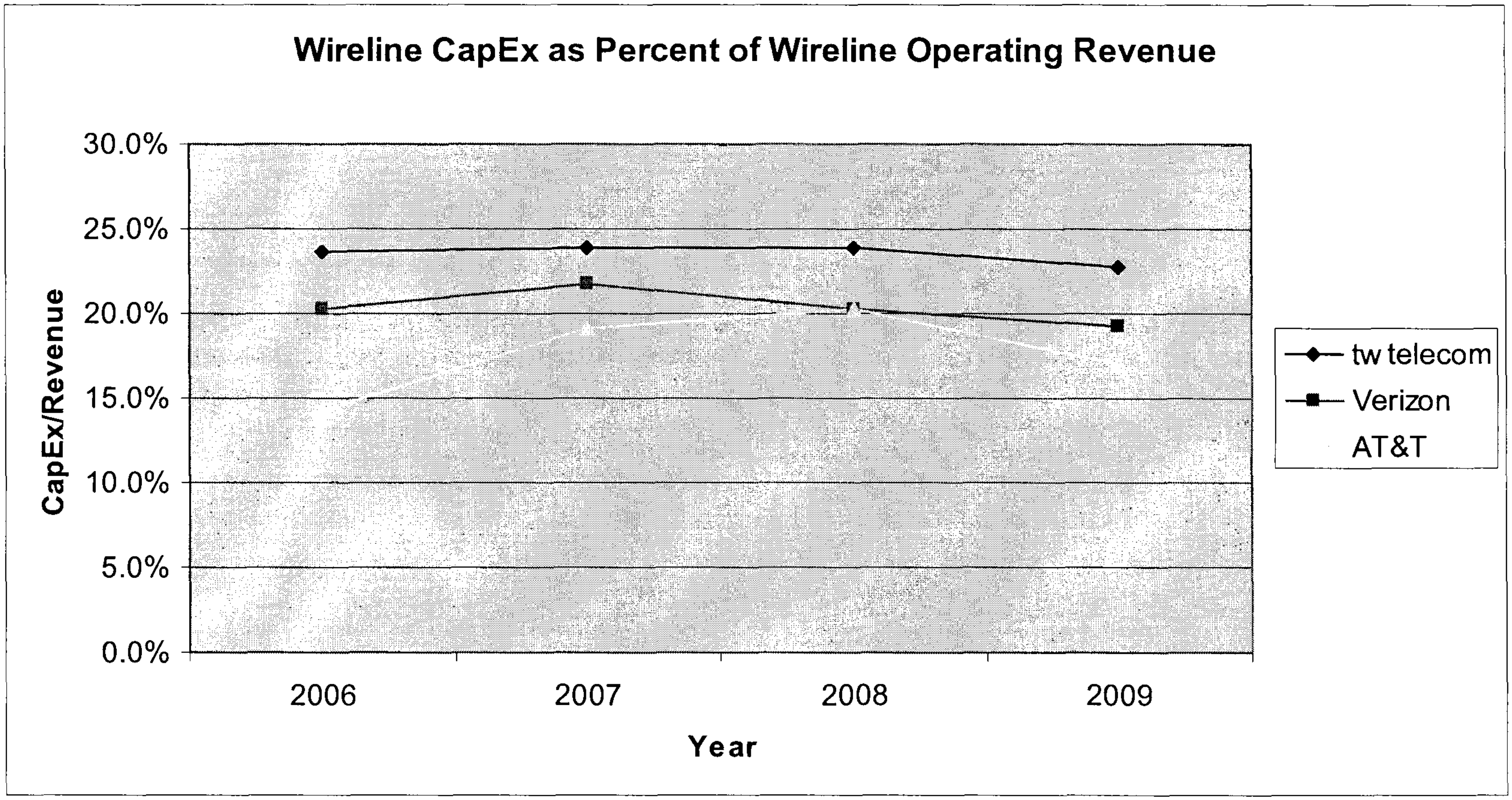
  - A mandate that utilities charge all attachers the same price; and

  - National rules governing all aspects of the survey and make-ready process (e.g., rules setting time limits for completion of work and permitting use of qualified third-party contractors).

III. UNIVERSAL SERVICE CONTRIBUTION METHODOLOGY

- The current contribution system is broken. The current USF contribution rules systematically discriminate in favor of ILECs and against competitors in the provision of broadband Internet access service. This is because (1) ILECs contribute to USF on special access sold to competitive providers of broadband Internet access service and the ILECs pass that 15% fee through to the competitors, but (2) the ILECs need not contribute to USF when they use their own special access loops to provide broadband Internet access service to retail customers. The result is that competitors that rely on special access to provide broadband Internet access must pay an extra 15% fee while ILECs (and cable companies) do not pay the fee.

- The FCC should promptly address this problem. The FCC should suspend enforcement of USF contributions for telecommunications services sold to providers of Internet access. The FCC should then quickly act on its plan to replace the current USF contribution methodology with a methodology that does not discriminate among competitors (e.g., a numbers-based contribution methodology).



Wireline CapEx as Percent of Wireline Operating Revenue
30.0%
25.0%
20.0%
15.0%
10.0%
5.0%
0.0%
CapEx/Revenue
2006
2007
2008
2009
Year
tw telecom
Verizon
AT&T